IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 338 of of 2006

Decided on : August 8, 2006.

Prehlad Singh **…..Appellant.**

VERSUS

State of H.P. & ors. **…..Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : **Mr. K.D.Sood, Advocate with Mr. B.K.Sood, Advocate.**

For the Respondents :

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. The appellant-plaintiff filed a suit for declaration that the order passed by the Assistant Collector Ist Grade, Kalpa in the proceedings, under Section 163 of the H.P. Land Revenue Act, thereby ordering the eviction of the plaintiff- appellant from land measuring 0-17-50 Hectare, bearing khasra No. 535/2, was illegal and without jurisdiction and hence not binding upon the plaintiff and that pursuant to that order he was not liable to be evicted from the aforesaid land. It was pleaded by the appellant- plaintiff that he had been in possession of the above described land since times immemorial and had planted apple trees on this land and that when he was served with a notice of proceedings, under Section 163 of the Land Revenue Act, he appeared before the Assistant Collector Ist

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Whether the reporters of the local papers may be allowed to see the Judgment?

Grade, Kalpa and took the plea that he was in adverse possession, but in spite of such a plea having been raised by him the Assistant Collector Ist Grade did not follow the procedure for trial of a civil suit in accordance with the provision of sub-section (3) of Section 163 of the H.P. Land Revenue Act, and hence, the proceedings conducted and the order passed in those proceedings by the Assistant Collector Ist Grade, were illegal and without jurisdiction.

3. Suit was contested by the respondents- defendants. It was denied that the plea of adverse possession was available to the plaintiff. Trial court framed various issues and at the end of the trial concluded that the order passed by the Assistant Collector Ist Grade, Kalpa was correct and as a matter of fact in execution of that order the appellant- plaintiff stood ejected. Appeal was filed by the appellant- plaintiff in the court of District Judge, but without success.

4. Now the appellant- plaintiff has come to this court. The only question that has been raised by the counsel for the plaintiff-appellant is that the order passed by the Assistant Collector Ist Grade is without jurisdiction, because when the plea of adverse possession had been raised, the Assistant Collector had no alternative but to proceed to try the matter in accordance with the procedure prescribed in the Code of Civil Procedure, for the trial of a suit and to have passed a decree.

5. I have heard the learned counsel for the appellant. I have also been shown the copy of the order passed by the Assistant Collector Ist Grade, which is available with the learned counsel. A perusal of the order shows that the appellant- plaintiff had taken the

plea before the Assistant Collector Ist Grade, Kalpa that he had been in possession of the suit land since last settlement and had planted apple trees on that land and the age of those trees was 15 to 16 years. The Assistant Collector Ist Grade has noticed that the last settlement had taken place in the year 1980-81. Proceedings were initiated against the appellant- plaintiff in the year 1994 and the order was passed in the year 1995. The fact that last settlement had taken place in 1980-81 and the proceedings against the appellant were initiated in the year 1994, suggests that the plaintiff- appellant had been in possession of the suit land for about 14-15 years when the ejectment proceedings were initiated. For prescription of title to the government land by adverse possession, the period is 30 years. That means according to the plaintiff- appellant's own plea, which he took before the Assistant Collector Ist Grade, he had not acquired title by adverse possession, and therefore, no fault can be found with the proceedings before the Assistant Collector Ist Grade or his not converting the proceedings into the proceedings of a civil suit.

6. For the foregoing reasons, the appeal is dismissed.

CMP No. 618 of 2006.

Infructuous.

(Surjit Singh)
Judge.

August 8, 2006.
(Hem)